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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/534,861

01/04/2006

Hans Brannstrom

10400-000027/US/NPB

6556

30593 7590 05/12/2009
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EXAMINER

SELF, SHELLEY M

ART UNIT

PAPER NUMBER

3725

MAIL DATE

DELIVERY MODE

05/12/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/534,861	BRANNSTROM ET AL.	
	Examiner	Art Unit	
	Shelley Self	3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/10/09;10/15/08</u> . | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3725

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With regard to claims 1 and 13, it is unclear if the floorboard comprises a resilient base, support layer and locking system, how is it the resilient base is arranged on an underside of the floorboard? How can the floorboard comprise a resilient layer on the underside of the floorboard? Similarly the same confusion results with the recitation, of a supporting layer...between the underside of the floorboard and the base. Accordingly a clear understanding of the claims can not be determined.

The above listing of 35 U.S.C. 112 2nd paragraph rejections is not conclusive. Applicant is required to review all of the claims for clarity and definiteness.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 13-17, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Moriau et al. (6,006,486) as noted in the previous Office Action (10/2/08). Moriau substantially

Art Unit: 3725

discloses the claimed invention. Moriau teaches a flooring comprised of neighboring substantially identical floorboards, joined by upper part (figs. 9-11), a joint plane(B; fig. 9), a resilient base (58) a supporting layer (8) a locking/fastening system (6, 9, 10; figs. 9-11; col. 5, lines 50-53).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-12, 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moriau et al. (6,006,486) alone, as noted in the previous Office Action 10/2/08.

As to the use or selection of elastic, rubber, MDF, HDF, plywood, particleboard, wood material plastic material or metal (clms. 2-7, 9-12) Examiner notes the selection of any known material based on its suitability for the intended use is a matter of obvious design expedients and requires only routine skill in the art. Furthermore such selection would be obvious to the skilled Artisan as Applicant has failed to positively recite any criticality to the use of elastic, rubber, MDF, HDF, plywood, particleboard, wood material plastic material or metal and instead teaches functionality with the use of each known material. Therefore such selection is not non-obvious and does not in itself warrant patentability. See *In re Leshin*, 125 USPQ 416.

As to the recitation, supporting layer having a greater modulus of elasticity (MOE) than the resilient base (clm. 8); Examiner notes that difference of materials utilized for the resilient

Art Unit: 3725

base and the supporting layer will inherently result in differing modulus of elasticity values as such is a defined characteristic of all materials. As to the MOE of the resilient layer being greater than that of the supporting layer selecting or determining an optimum value of either the resilient base MOE or the supporting layer MOE involves only routine skill in the art. See *In re Boesch*, 617 F.2d 272, 205 USPQ

As to the resilient base having a first horizontal extent substantially equal to a length of a first edge and a second horizontal extent less than half a length of a second edge of the floorboard (clm. 18), it would have been obvious at the time of the invention to construct Moriau such that first horizontal extend substantially equal to a length of a first edge and a second horizontal extend less than half a length of a second edge of the floorboard, because it has been held that discovering an optimum valve of a result effective variable, i.e. the lengths of the extent involves only routine skill in the art. . See *In re Boesch*, 617 F.2d 272, 205 USPQ

Response to Arguments

Applicant's arguments filed January 26, 2009 have been carefully considered but they are not persuasive. Applicant's remarks are the failure of the prior art, Moriau et al. to disclose or fairly suggest a resilient base. Applicants states, "the backing layer 58 is not a resilient base." Applicant further states that the disclosure of the corresponding U.S. Patent Publication 2006/0174974 states that a resilient base as taught by the claimed invention may be an elastic material that is capable of absorbing and emitting energy i.e. that has a resilient function." Examiner concedes the prior art does not explicitly disclose an elastic material. However the claimed invention does not positively recite the resilient base to be composed of an elastic

Art Unit: 3725

material. The invention as recited in claim 1 states, a resilient base material. Examiner notes, resilient is understood to mean characterized or marked by resilience: capable of withstanding shock without permanent deformation or rupture; tending to recover from or adjust easily to misfortune or change (Merriam Webster On-Line Dictionary). Moriau teaches the backing layer (58) can be constructed of various materials (col. 9, lines 10-15) and suggests melamine resin or resins as one such material for the layer (58). Melamine Resin is understood to be a thermoplastic material, further thermoplastics are known in the chemical art to have significant resiliency; therefore Moriau's selection of melamine resin as the backing layer does teach the backing layer (58) to be resilient. Accordingly Applicant's argument's regarding the failure of the prior art Moriau to teach a resilient base are not deemed persuasive and the rejection in view of Moriau is deemed proper and stands.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

Art Unit: 3725

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley Self whose telephone number is 571-272-4524. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dana Ross can be reached on 571-272-4480. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Shelley Self/
Primary Examiner, Art Unit 3725

SS
May 9, 2009